(16,144.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 854.

DANIEL WILEY, PLAINTIFF IN ERROR,

vs.

D. L. SINKLER, T. D. LANIGAN, AND BENJAMIN ELFE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 13, 1896.

1 *Caption.*

At a circuit court of the United States for the fourth circuit, in and for the district of South Carolina, begun and holden at Columbia, in the district aforesaid, on the fourth Monday in November, 1895, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding the said circuit court according to the form of the act of Congress in said cases made and provided, the following proceedings were had:

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

Be it remembered that heretofore, to wit, on the eleventh day of March, 1895, the said plaintiff, by his attorneys, Messrs. Obear and Douglass, *and* filed the following complaint; which complaint is in the words and tenor following:

2 *Complaint.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

The plaintiff above named complains of the above-named defendants, and alleges:

I. That the plaintiff is and was on the 6th day of November, 1894, a resident of the city and county of Charleston, in the State of South Carolina, and that he had been a resident of said State for a period of more than twelve months next preceding said 6th day of November, 1894, and a resident of said city and county for more than sixty days next preceding said day, and that under the constitution and laws of the said State of South Carolina and the Constitution and laws of the United States the said plaintiff is and was at the time aforesaid twenty-one years of age, and is and was in every other respect a duly qualified elector of said State, and is and was on the said 6th day of November, 1894, entitled to vote for a member of the House of Representatives of the United States from said State of South Carolina.

II. That the defendants were on the day and year aforesaid the board of managers of the Federal election at the First election
3 precinct in the Sixth ward of said city of Charleston, in said county and State; that, as the plaintiff has been informed and believes, the said defendants were duly appointed and qualified

as such managers, and that they were present at the polling place in the said election precinct on the said 6th day of November, 1894, and during all the time the polls were opened on said day were there, acting as such board of managers of the Federal election.

III. That the proper election precinct at which the said plaintiff was entitled to vote is the said First precinct in the Sixth ward of the city and county of Charleston, in the State aforesaid, and that on the said 6th day of November, 1894, and while the polls were open for voting purposes the said plaintiff presented himself at the polling place in said election precinct, and then and there offered to vote and cast his ballot for one of the candidates for the office of member of the House of Representatives of the United States for the State of South Carolina in the Fifty-fourth Congress; and the plaintiff further avers that he then and there had ready the proof of his qualifications as such Federal elector as aforesaid.

IV. That the said defendants unlawfully, wilfully, and injuriously refused to permit the said plaintiff to vote at said precinct and at said Federal election which was there held, according to law, on said 6th day of November, 1894, for one of the candidates for member of said House of Representatives of the United States for the State aforesaid, and wrongfully and wilfully and without any lawful cause or excuse rejected the plaintiff's said vote, to his damage two thousand and five hundred dollars.

Wherefore the plaintiff demands judgment against the defendant for the said sum of two thousand and five hundred dollars and for the costs of this action.

OBEAR & DOUGLASS,
Plaintiff's Attorney.

Filed 11th March, 1895.

4 *Summons.*

UNITED STATES OF AMERICA,
District of South Carolina,

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

To the defendants:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer on the subscribers at their office, Columbia, South Carolina, on or before the rule day occurring twenty days next after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid the plaintiff will apply to the court for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Charleston, S. C., this eleventh day of March, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and nineteenth year of the sovereignty and independence of the United States of America.

OBEAR & DOUGLASS,
Plaintiff's Attorneys.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Filed 11th March, 1895.

5 *Marshal's Return of Service.*

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he executed the within process by serving a copy of the within personally upon D. L. Dinkler and T. D. Lanigan in the city of Charleston on the 12th day of March, 1895.

H. J. HICKSON, *D. M.*

Sworn to before me 19th March, 1895.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Personally appeared Thomas H. Colcock, deputy U. S. marshal, who on oath says that he executed the within process by serving a copy of same personally on Benj. Elfe in Charleston on this the 16th day of March, 1895.

THOMAS H. COLCOCK, *D. M.*

Sworn to and subscribed before me this 16th March, 1895.

J. WESLEY SMITH,
U. S. Comm'r.

6 *Answer.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJ. ELFE, Defendants.

The defendants, answering the complaint herein, by Wm. A. Barber, attorney general, say:

1. That they deny each and every allegation of the complaint not herein specifically admitted.

2. That they have no knowledge or information as to the allegations of the first paragraph of the complaint sufficient to form a belief, and therefore deny the same.

3. They admit the allegations of the 2nd paragraph of the complaint.

4. They have no knowledge or information as to the allegations of the 3rd paragraph of the complaint sufficient to form a belief, and therefore deny the same.

5. They deny the allegations of the 4th paragraph of the complaint, and aver that as such managers they lawfully performed all the duties enjoined upon them in the conduct of the said Federal election, and the plaintiff was denied by them no right as a citizen or voter to which he was entitled.

Wherefore they demand judgment that the complaint be
7 dismissed with costs.

WM. A. BARBER,
Att'y Gen'l, Defendants' Att'ys.

Filed 6th May, 1895.

Service accepted this 6th day of May, 1895.

OBEAR & DOUGLASS,
Pl'ff's Att'ys.

8 *Oral Demurrer.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

The defendants in the above-stated case, by William A. Barber, attorney general, interpose an oral demurrer to the complaint:

1st. That this court has no jurisdiction of the action:

(*a.*) Because it does not affirmatively appear upon the face of the complaint that a Federal question is involved.

(*b.*) Because it appears from the plaintiff's own statement on face of complaint that a verdict for $2,000.00 would be so excessive as to require the court to set it aside.

(*c.*) Because the action is not brought under the United States statute authorizing actions against managers of election for members of Congress.

(*d.*) Because no action at common law can be maintained when there is a statutory action provided which abrogates the common-law right.

2nd. That the complaint does not state facts sufficient to constitute a cause of action:

(*a.*) Because under section 2008 of the Revised Statutes of the United States an action must be brought for a penalty and
9 not in trespass for damages, and the complaint does not contain proper allegations to entitle the plaintiff to recover the penalty provided by the statute.

(*b.*) Because the allegations in the complaint do not affirmatively show that this court has jurisdiction.

(c.) Because the allegations in the complaint are not such as to bring the action within the provisions of section 2008 of Revised Statutes of the United States as at the common law.

WM. A. BARBER,
Attorney General of S. C., for Defendants.

Filed 3rd December, 1895.

10 *Trial of Cause.*

At the stated term of the circuit court begun and holden at Columbia, S. C., in the district aforesaid, on the 3rd day of December, 1895, this case came up for hearing before the court. The pleadings were read to the court and an oral demurrer was entered by C. P. Townsend, assistant attorney general, on behalf of the defendants. After hearing argument of counsel, the court entered the following order:

11 *Order Sustaining Demurrer and Dismissing Complaint.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

This case comes up on demurrer to the complaint. Among other causes of demurrer is this: That the complaint does not state facts sufficient to constitute a cause of action. There is in the statute law of South Carolina, of which this court is bound to take judicial cognizance, an act providing for the registration of all the voters of this State. The provisions of this act have been passed upon by the supreme court of South Carolina, and the constitutionality of this act has been adjudicated and established. The complaint fails to state that the plaintiff is a duly registered voter of the State of South Carolina. This is a fact—a material averment necessary to make his case.

The demurrer is sustained on this ground without considering the others, and the complaint is dismissed.

CHARLES H. SIMONTON,
Circuit Judge.

3rd December, 1895.

Filed 3rd December 1895.

12 *Assignments of Errors.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJ. ELFE, Defendants.

And now comes Daniel Wiley, the plaintiff in the above-entitled cause, and respectfully assigns the following errors in the order, decree, and judgment rendered by his honor Charles H. Simonton, circuit judge in the said cause, and dated the 3rd day of December, 1895:

1. That his honor erred in holding that the registration enactments of the State of South Carolina are valid regulations of the elective franchise and have been so declared and adjudged by the supreme court of the aforesaid State of South Carolina.

2. That his honor erred in not holding that said registration enactments constitute a scheme to deprive certain citizens of the State of South Carolina, including the plaintiff, of the right of suffrage for causes not prescribed by any constitutional authority.

3. That his honor erred in holding that said registration enactments do not violate the Constitution of the United States in any particular.

4. That his honor erred in holding that said registration
13 enactments do not violate the constitution of the State of South Carolina in any particular.

5. That his honor erred in holding that said registration enactments do not violate section 2 of article I of the Constitution of the United States in this, that they attempt to prevent the plaintiff and others entitled under the constitution of the State of South Carolina and of the United States to vote for members of the House of Representatives of the United States from the State of South Carolina from so doing, unless clothed with certain further qualifications not prescribed by either of said constitutions.

6. That his honor erred in holding that said registration enactments do not violate section 4 of article IV of the Constitution of the United States, which said section requir-s in effect that each State shall provide for its citizens a republican form of Government.

7. That his honor erred in holding that said registration enactments do not violate the fifth amendment to the Constitution of the United States in this, that they attempt to deprive the plaintiff and other constitutionally qualified electors of said State of South Carolina, like circumstanced with him, of their property rights without due process of law.

8. That his honor erred in holding that said registration enact-

ments do not violate section 1 of article XIV of the Constitution of the United States in this, that they attempt to deny to the plaintiff and to other citizens of the State of South Carolina in like circumstances with him the equal protection of the laws.

9. That his honor erred in holding that said registration enactments do not violate section 1 of article XV of the Constitution of the United States in this, that they attempt to deny or abridge the right of the plaintiff and other citizens of the State of South Carolina in like circumstances with him to vote on account of race, color, or ~~previous~~ condition of servitude.

10. That his honor erred in holding that said registration enactments do not violate section 31 of article I of the constitution of the State of South Carolina in this, that they attempt to deny to the plaintiff and to certain other inhabitants of said State, possessing the qualifications provided in said constitution for electors, the equal right to vote and, with other citizens of said State, to elect officers and to be elected to fill public office.

11. That his honor erred in holding that said registration enactments do not violate section 33 of article I of the Constitution of the State of South Carolina, which section provides, "The right of suffrage shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct."

12. That his honor erred in holding that said registration enactments do not violate section 2 of article VIII of the constitution of the State of South Carolina, which prescribes the qualifications of electors in said State, in this, that they attempt to add to said qualifications certain further qualifications not prescribed by said constitution.

13. That his honor erred in holding that said registration enactments do not violate section 3 of article VIII of the constitution of the State of South Carolina in this, that they prescribe for each citizen of said State only one opportunity for becoming registered, as directed by said enactments, instead of prescribing and providing for the registration of all electors from time to time.

14. That his honor erred in holding that said registration enactments do not violate section 7 of article VIII of the constitution of the State of South Carolina in this, that they add to the residence of sixty days therein prescribed such further residence as may be necessary to comply with the requirements of said registration enactments.

15. That his honor erred in holding that said registration enactments do not violate section 8 of article VIII of the constitution of the State of South Carolina in this, that they attempt to deprive the plaintiff and certain other citizens of said State in like circumstances with him of the right of suffrage for causes not included in nor prescribed nor authorized by said constitution.

16. That his honor erred in holding that said registration enactments do not violate section 10 of article VIII of the constitution of the State of South Carolina in this, that they add to the residence of three months therein prescribed such further residence as may be

necessary to comply with the requirements of said registration enactments.

17. That while it is conceded that, if said registration enactments are valid and constitutional, his honor correctly decided in sustaining defendants' demurrer, yet it is submitted, said enactments being in violation of the provisions of both the State and United States constitutions, his honor erred in sustaining said demurrer and dismissing said plaintiff's complaint.

OBEAR & DOUGLASS,
Attorney- for Plaintiff, Appellant.

Filed 20th December, 1895.

16 *Petition for Writ of Error.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

To the honorable the circuit judges of the circuit court of the United States for the district of South Carolina:

Daniel Wiley, the plaintiff above named, presents this his petition for the allowance of a writ of error from the decision and judgment of his honor Judge Charles H. Simonton made and filed in the above-entitled case, wherein he sustained the demurrer of the defendants and dismissed the said plaintiff's complaint.

And the said plaintiff prays such writ of error and that a transcript of the record and proceedings and papers in this cause may be sent to the Supreme Court of the United States, sitting at Washington, in the District of Columbia.

And your petitioner will ever pray, and so forth.

DANIEL WILEY,
By his counsel, OBEAR & DOUGLASS.

Filed 26th December, 1895.

17 *Allowance of Writ of Error.*

Prayer of the petition granted and writ of error allowed this 26th day of December, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Filed 26th December, 1895.

18 *Appeal Bond and Approval.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

Know all men by these presents that we, Daniel Wiley, A. Washington, and Robert Brisbane, are held and firmly bound unto D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, parties defendant in the above-entitled case, in the penal sum of two hundred and fifty dollars ($250.00); to which payment, well and truly to be made and done, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the sixteenth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a circuit court of the United States for the district of South Carolina, in a suit depending in said court between Daniel Wiley, plaintiff, and D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, defendants, a judgment was rendered against the said Daniel Wiley, and the said Daniel Wiley having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation

19 directed to the said D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, citing and admonishing them to be and appear in the Supreme Court of the United States, to be holden in Washington, in the District of Columbia, on the day in said citation mentioned:

Now, the condition of the above obligation is such that if the above-bound Daniel Wiley shall prosecute his said writ of error to effect and shall answer and pay all costs incurred by him if he shall fail to make his plea good, then the above obligation shall be void and of no effect; otherwise it shall remain in full force and virtue.

DANIEL WILEY. [L. S.]
A. WASHINGTON. [L. S.]
his
ROBERT x BRISBANE. [L. S.]
mark.

Signed, sealed, and delivered in the presence of—

W. H. PURVIS.
J. L. C. SMALLS.
C. J. MURPHY,
As to A. Washington and Robert Brisbane.

STATE OF SOUTH CAROLINA, }
County of Charleston. }

A. Washington and Robert Brisbane, being severally duly sworn, say each for himself that he executed the foregoing bond or obligation, and that he is worth more than the sum of two hundred and fifty dollars ($250.00) over and above all his debts and liabilities and exclusive of property exempt by law from execution.

A. WASHINGTON.
his
ROBERT x BRISBANE.
mark.

Sworn to and subscribed before me this 16th day of December, 1895.

J. E. HAGOOD,
[SEAL.] *C. C. C. U. S., Dist. S. C.*

Bond approved this 16th day of December, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

(Filed 16th December, 1895.)

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Daniel Wiley, plaintiff, and D. L. Sinkler, T. D. Lanigan, and Benj. Elfe, defendants, a manifest error hath happened, to the great damage of the said plaintiff, Daniel Wiley, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 25 day of January, 1896, in the said Supreme Court to be then and there held, that, the
21 record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court, District of So. Carolina.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the 26th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Allowed by—
CHARLES H. SIMONTON,
Circuit Judge.

22 [Endorsed:] United States of America, South Carolina district, fourth circuit. Daniel Wiley, plaintiff, *vs.* D. L. Sinkler and others, defendants. Writ of error. Filed 26 Dec., 1895. J. E. Hagood, C. C. C. U. S., dist. S. C. Original.

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States to D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 25 day of January, 1896, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein Daniel Wiley is plaintiff in error and you are defendants in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States, this 26 day of December, in the year of our Lord one thousand eight hundred and ninety —.

CHARLES H. SIMONTON,
Circuit Judge.

24 [Endorsed:] United States of America. South Carolina district, fourth circuit. Daniel Wiley, plaintiff, *vs.* D. L. Sinkler and others, defendants. Citation. Filed 26 Dec., 1895. J. E. Hagood, C. C. U. S., dist. S. C. Original.

Service of within citation accepted this 27th day of December, A. D. 1895.

WM. A. BARBER, *Att'y Gen'l.*

25 *Clerk's Certificate.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records and proceedings in the case of Daniel Wiley, plaintiff, against D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, defendants, rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Seal U. S. Circuit Court, District of So. Carolina.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., in the district aforesaid, this 11th day of January, A. D. 1896.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,144. S. Carolina C. C. U. S. Term No., 854. Daniel Wiley, plaintiff in error, *vs.* D. L. Sinkler, T. D. Lanigan, & Benjamin Elfe. Filed January 16, 1896.